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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170817779-8161-02]

RIN 0648-XG684

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2019 Bering Sea and Aleutian Islands Pollock, Atka Mackerel, and Pacific cod Total Allowable Catch Amounts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2019 total allowable catch (TAC) amounts for the Bering Sea and Aleutian Islands (BSAI) pollock, Atka mackerel, and Pacific cod fisheries. This action is necessary because NMFS has determined these TACs are incorrectly specified, and will ensure the BSAI pollock, Atka mackerel, and Pacific cod TACs are the appropriate amounts based on the best available scientific information. Also, NMFS is announcing the Aleutian Islands Catcher Vessel (CV) Harvest Set-Aside and Bering Sea Trawl CV A-Season Sector Limitation will be in effect for 2019, and TACs in this inseason adjustment will apply for 2019. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), *[insert date of filing for public inspection at the Office of the Federal Register]*, until the effective date of the final 2019 and

2020 harvest specifications for BSAI groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t.,
[insert date 15 days after publication in the *FEDERAL REGISTER*].

ADDRESSES: Submit your comments, identified by NOAA-NMFS-2018-0801, by either of the following methods:

- *Federal e-Rulemaking Portal:* Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0801, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record, and NMFS will post the comments for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery

Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The final 2018 and 2019 harvest specifications for groundfish in the BSAI (83 FR 8365, February 27, 2018) set the 2019 Aleutian Islands (AI) pollock TAC at 19,000 metric tons (mt), the 2019 Bering Sea (BS) pollock TAC at 1,383,000 mt, the 2019 BSAI Atka mackerel TAC at 72,500 mt, the 2019 BS Pacific cod TAC at 159,120 mt, and the 2019 AI Pacific cod TAC at 15,695 mt. Also set was a 2019 AI pollock ABC of 30,803 mt and a Western Aleutian Islands limit for Pacific cod at 25.6 percent of the AI Pacific cod TAC. In December 2018, the North Pacific Fishery Management Council (Council) recommended a 2019 BS pollock TAC of 1,397,000 mt, which is more than the 1,383,000 mt TAC established by the final 2018 and 2019 harvest specifications for groundfish in the BSAI. The Council also recommended increasing the AI pollock ABC to 52,887 mt from 30,803 mt. This increases some 2019 area and seasonal limits for AI pollock. The Council also recommended a 2019 BSAI Atka mackerel TAC of 57,951 mt, which is less than the 72,500 mt TAC established by the final 2018 and 2019 harvest specifications for groundfish in the BSAI. Furthermore, the Council recommended a 2019 BS Pacific cod TAC of 166,475 mt, and an AI Pacific cod TAC of 14,214 mt, which is more than the BS Pacific cod TAC of 159,120 mt, and less than the AI Pacific cod TAC of 15,695 mt established by the final 2018 and 2019 harvest specifications for groundfish in the BSAI. In addition to changes in TACs, the Council recommended changing the percentage limit of Western Aleutian Islands Pacific cod to 15.7 percent of the AI Pacific cod ABC, from the 25.6 percent of the AI Pacific cod TAC. The Council's recommended 2019 TACs, and the area and seasonal apportionments, are based on the Stock Assessment and Fishery Evaluation report

(SAFE), dated November 2018, which NMFS has determined is the best available scientific information for these fisheries.

Regulations at § 679.20(a)(7)(viii) require NMFS to announce whether the AI incidental catch allowance, directed fishing allowance, CV Harvest Set-Aside, and Unrestricted Fishery, as well as the Bering Sea Trawl CV A-Season Sector Limitation will be in effect for 2019. NMFS received notification from Adak that a shoreplant will be processing AI Pacific cod in 2019. Therefore, the Pacific cod TACs in Table 9 of this inseason adjustment will be effective for 2019 and the harvest limits in Table 9B (83 FR 8365, February 27, 2018) will apply in 2019.

Steller sea lions occur in the same location as the pollock, Atka mackerel, and Pacific cod fisheries and are listed as endangered under the Endangered Species Act (ESA). Pollock, Atka mackerel, and Pacific cod are a principal prey species for Steller sea lions in the BSAI. The seasonal apportionment of pollock, Atka mackerel, and Pacific cod harvest is necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. NMFS published regulations and the revised harvest limit amounts for pollock, Atka mackerel, and Pacific cod fisheries to implement Steller sea lion protection measures to insure that groundfish fisheries of the BSAI are not likely to jeopardize the continued existence of the western distinct population segment of Steller sea lions or destroy or adversely modify their designated critical habitat (79 FR 70286, November 25, 2014). The regulations at § 679.20(a)(5)(i) and (ii) specify how the BS and AI pollock TAC will be apportioned. The regulations at § 679.20(a)(7) specify how the BSAI Pacific cod TAC will be apportioned. The regulations at § 679.20(a)(8) specify how the BSAI Atka mackerel TAC will be apportioned.

In accordance with § 679.25(a)(1)(iii), (a)(2)(i)(B), and (a)(2)(iv), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2018 SAFE report for this fishery, the current BSAI pollock, Atka mackerel, and Pacific cod TACs are incorrectly specified. Pursuant to § 679.25(a)(1)(iii), the Regional Administrator is adjusting the 2019 BS pollock TAC to 1,397,000 mt, the 2019 BSAI Atka mackerel TAC to 57,951 mt, the 2019 BS Pacific cod TAC to 166,475 mt, and the AI Pacific cod TAC to 14,214 mt. Therefore, Table 2 of the final 2018 and 2019 harvest specifications for groundfish in the BSAI (83 FR 8365, February 27, 2018) is revised consistent with this adjustment.

Pursuant to § 679.20(a)(5)(i) and (ii), Table 5 of the final 2018 and 2019 harvest specifications for groundfish in the BSAI (83 FR 8365, February 27, 2018) is revised for the 2019 BS and AI allocations of pollock TAC to the directed pollock fisheries and to the Community Development Quota (CDQ) directed fishing allowances consistent with this adjustment. For AI pollock, the Steller sea lion protection measure final rule (79 FR 70286, November 25, 2014), sets harvest limits for pollock in the A season (January 20 to June 10) in Areas 543, 542, and 541, see § 679.20(a)(5)(iii)(B)(6). In Area 541, the 2019 A season pollock harvest limit is no more than 30 percent, or 15,866 mt, of the AI ABC of 52,887 mt. In Area 542, the 2019 A season pollock harvest limit is no more than 15 percent, or 7,933 mt, of the AI ABC of 52,887 mt. In Area 543, the 2019 A season pollock harvest limit is no more than 5 percent, or 2,644 mt, of the AI pollock ABC of 52,887 mt.

TABLE 5—FINAL 2019 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA)¹.

[Amounts are in metric tons]

Area and sector	2019 Allocations	2019 A season ¹		2019 B season ¹
		A season DFA	SCA harvest limit ²	B season DFA
Bering Sea subarea T AC ¹	1,397,000	n/a	n/a	n/a
CDQ DFA	139,700	62,865	39,116	76,835
ICA ¹	49,035	n/a	n/a	n/a
Total Bering Sea non-CDQ DFA	1,208,265	543,719	338,314	664,546
AFA Inshore	604,133	271,860	169,157	332,273
AFA Catcher/Processors ³	483,306	217,488	135,326	265,818
Catch by C/Ps	442,225	199,001	n/a	243,224
Catch by CVs ³	41,081	18,486	n/a	22,595
Unlisted C/P Limit ⁴	2,417	1,087	n/a	1,329
AFA Motherships	120,827	54,372	33,831	66,455
Excessive Harvesting Limit ⁵	211,446	n/a	n/a	n/a
Excessive Processing Limit ⁶	362,480	n/a	n/a	n/a
Aleutian Islands subarea ABC	52,887	n/a	n/a	n/a
Aleutian Islands subarea T AC ¹	19,000	n/a	n/a	n/a
CDQ DFA	1,900	760	n/a	1,140
ICA	2,400	1,200	n/a	1,200
Aleut Corporation	14,700	14,700	n/a	0
Area harvest limit ⁷ 541	15,866	n/a	n/a	n/a
542	7,933	n/a	n/a	n/a
543	2,644	n/a	n/a	n/a
Bogoslof District ICA ⁸	500	n/a	n/a	n/a

¹Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock, after subtracting the CDQ DFA (10 percent) and the ICA (3.9 percent), is allocated as a DFA as follows: inshore sector – 50 percent, catcher/processor sector (C/P) – 40 percent, and mothership sector – 10 percent. In the Bering Sea subarea, 45 percent of the DFA is allocated to the A season (January 20–June 10) and 55 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(2)(i) through (iii), the annual Aleutian Islands pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second for the ICA (2,400 mt), is allocated to the Aleut Corporation for a pollock directed fishery. In the Aleutian Islands subarea, the A season is allocated up to 40 percent of the ABC, and the B season is allocated the remainder of the pollock directed fishery.

²In the Bering Sea subarea, pursuant to § 679.20(a)(5)(i)(C), no more than 28 percent of each sector's annual DFA may be taken from the SCA before noon, April 1.

³Pursuant to § 679.20(a)(5)(i)(A)(4), 8.5 percent of the DFA allocated to listed catcher/processers shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processers.

⁴Pursuant to § 679.20(a)(5)(i)(A)(4)(iii), the AFA unlisted catcher/processers are limited to harvesting not more than 0.5 percent of the catcher/processers sector's allocation of pollock.

⁵Pursuant to § 679.20(a)(5)(i)(A)(6), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

⁶Pursuant to § 679.20(a)(5)(i)(A)(7), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

⁷Pursuant to § 679.20(a)(5)(iii)(B)(6), NMFS establishes harvest limits for pollock in the A season in Area 541 of no more than 30 percent, in Area 542 of no more than 15 percent, and in Area 543 of no more than 5 percent of the Aleutian Islands pollock ABC.

⁸The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only and are not apportioned by season or sector.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Pursuant to § 679.20(a)(8), Table 7 of the final 2018 and 2019 harvest specifications for groundfish in the BSAI (83 FR 8365, February 27, 2018) is revised for the 2019 seasonal and spatial allowances, gear shares, CDQ reserve, incidental catch allowance, and Amendment 80 allocation of the BSAI Atka mackerel TAC consistent with this adjustment.

TABLE 7—FINAL 2019 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATION OF THE BSAI ATKA MACKEREL TAC.

Sector ¹	Season ^{2,3,4}	[Amounts are in metric tons]		
		2019 allocation by area		
		Eastern Aleutian District/Bering Sea ⁵	Central Aleutian District ⁵	Western Aleutian District ⁵
TAC	n/a	23,970	14,390	19,591
CDQ reserve	Total	2,565	1,540	2,096
	A	1,282	770	1,048
	Critical Habitat	n/a	462	629
	B	1,282	770	1,048
	Critical Habitat	n/a	462	629
non-CDQ TAC	n/a	21,405	12,850	17,495
ICA	Total	800	75	20
Jig ⁷	Total	103	0	0
BSAI trawl limited access	Total	2,050	1,278	0
	A	1,025	639	0
	Critical Habitat	n/a	383	0
	B	1,025	639	0
	Critical Habitat	n/a	383	0
Amendment 80 sectors ⁷	Total	18,452	11,498	17,475
	A	9,226	5,749	8,737
	Critical Habitat	n/a	3,449	5,242
	B	9,226	5,749	8,737
	Critical Habitat	n/a	3,449	5,242

¹ Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting the CDQ reserves, jig gear allocation, and ICAs, to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to 50 CFR part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

² Sections 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

³ The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

⁴ Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10 and the B season from June 10 to December 31.

⁵ Section 679.20(a)(8)(ii)(C)(1)(i) limits no more than 60 percent of the annual TACs in Areas 542 and 543 to be caught inside of Steller sea lion critical habitat; section 679.20(a)(8)(ii)(C)(1)(ii) equally divides the annual TACs between the A and B seasons as defined at § 679.23(e)(3); and section 679.20(a)(8)(ii)(C)(2) requires the TAC in Area 543 shall be no more than 65 percent of ABC in Area 543.

⁶ Section 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea TAC be allocated to jig gear after subtracting the CDQ reserve and the ICA. NMFS set the amount of this allocation for 2019 at 0.5 percent. The jig gear allocation is not apportioned by season.

⁷ The 2019 allocations for Atka mackerel between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2018. NMFS will post 2019 Amendment 80 allocations when they become available in December 2018.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Pursuant to § 679.20(a)(7), Table 9 of the final 2018 and 2019 harvest specifications for groundfish in the BSAI (83 FR 8365, February 27, 2018) is revised for the 2019 gear shares and seasonal allowances of the BSAI Pacific cod TAC consistent with this adjustment.

TABLE 9—FINAL 2019 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC.

[Amounts are in metric tons]

Gear sector	Percent	2019 share of gear sector total	2019 share of sector total	2019 seasonal apportionment	
				Seasons	Amount
BS TAC	n/a	166,475	n/a	n/a	n/a
BS CDQ	n/a	17,813	n/a	see § 679.20(a)(7)(i)(B)	n/a
BS non-CDQ TAC	n/a	148,662	n/a	n/a	n/a
AI TAC	n/a	14,214	n/a	n/a	n/a
AI CDQ	n/a	1,521	n/a	see § 679.20(a)(7)(i)(B)	n/a
AI non-CDQ TAC	n/a	12,693	n/a	n/a	n/a
Western Aleutian Island Limit	n/a	2,232	n/a	n/a	n/a
Total BSAI non-CDQ TAC ¹	n/a	161,355	n/a	n/a	n/a
Total hook-and-line/pot gear	60.8	98,104	n/a	n/a	n/a
Hook-and-line/pot ICA ²	n/a	400	n/a	see § 679.20(a)(7)(ii)(B)	n/a
Hook-and-line/pot sub-total	n/a	97,704	n/a	n/a	n/a
Hook-and-line catcher/processor	48.7	n/a	78,260	Jan 1-Jun 10	39,912
				Jun 10-Dec 31	38,347
Hook-and-line catcher vessel ≥ 60 ft LOA	0.2	n/a	321	Jan 1-Jun 10	164
				Jun 10-Dec 31	157
Pot catcher/processor	1.5	n/a	2,410	Jan 1-Jun 10	1,229
				Sept 1-Dec 31	1,181
Pot catcher vessel ≥ 60 ft LOA	8.4	n/a	13,499	Jan 1-Jun 10	6,884
				Sept 1-Dec 31	6,614
Catcher vessel < 60 ft LOA using hook-and-line or pot gear	2	n/a	3,214	n/a	n/a
Trawl catcher vessel	22.1	35,660	n/a	Jan 20-Apr 1	26,388
				Apr 1-Jun 10	3,923
				Jun 10-Nov 1	5,349
AFA trawl catcher/processor	2.3	3,711	n/a	Jan 20-Apr 1	2,783
				Apr 1-Jun 10	928
				Jun 10-Nov 1	0
Amendment 80	13.4	21,622	n/a	Jan 20-Apr 1	16,216
				Apr 1-Jun 10	5,405
				Jun 10-Dec 31	0
Jig	1.4	2,259	n/a	Jan 1-Apr 30	1,355
				Apr 30-Aug 31	452
				Aug 31-Dec 31	452

¹ The gear shares and seasonal allowances for BSAI Pacific cod TAC are based on the sum of the BS and AI Pacific cod TACs, after the subtraction of CDQ. If the TAC for Pacific cod in either the AI or BS is reached, then directed fishing for Pacific cod in that subarea may be prohibited, even if a BSAI allowance remains.

² The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 400 mt for 2019 based on anticipated incidental catch in these fisheries.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Table 9B–2019 BSAI A-season Pacific Cod Limits if Aleutian Islands Shoreplants Intend to Process Pacific Cod.

2019 Allocations under Aleutian Islands CV Harvest Set-Aside	Amount (mt)
AI non-CDQ TAC	14,214
AI ICA	2,500
AI DFA	11,714
BS non-CDQ TAC	148,662
BSAI Trawl CV A-Season Allocation	26,388
BSAI Trawl CV A-Season Allocation minus Sector Limitation ¹	21,388
BS Trawl CV A-Season Sector Limitation	5,000
AI CV Harvest Set-Aside ²	5,000
AI Unrestricted Fishery ³	6,714

¹ This is the amount of the BSAI trawl CV A-season allocation that may be harvested in the Bering Sea prior to March 21, 2019, unless the BS Trawl CV A-Season Sector Limitation is suspended for the remainder of the fishing year because the performance requirements pursuant to § 679.20(a)(7)(viii)(E) were not met.

² Prior to March 15, 2019, only catcher vessels that deliver their catch of AI Pacific cod to AI shoreplants for processing may directed fish for that portion of the AI Pacific cod non-CDQ DFA that is specified as the AI CV Harvest Set-Aside, unless lifted because the performance requirements pursuant to § 679.20(a)(7)(viii)(E) were not met.

³ Prior to March 15, 2019, vessels otherwise authorized to directed fish for Pacific cod in the AI may directed fish for that portion of the AI Pacific cod non-CDQ DFA that is specified as the AI Unrestricted Fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the appropriate allocations for pollock, Atka mackerel, and Pacific cod in the BSAI based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December xx, 2018, and additional time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until *[insert date 15 days after publication in the FEDERAL REGISTER]*.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 21, 2018.

Karen H. Abrams,
Acting Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

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